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3458 ELLICOTT CENTER DRIVE-SUITE 101
ELLICOTT CITY MD 21043

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In re Application of	:	
David R. Fischell et al	:	
Application No. 10/642,245	:	DECISION ON PETITION
Filed: August 18, 2003	:	UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. MR3065-19	:	

This is a decision on the petition under 37 CFR § 1.78(a)(3), filed September 15, 2008, to accept an unintentionally delayed claim under 35 U.S.C. § 120 for benefit of priority to the prior-filed Application No. 10/251,505 filed September 20, 2002.

The petition is **DISMISSED AS MOOT**.

Where a claim for priority under 37 CFR § 1.78(a)(3) is not included in the first sentence of the specification or in an ADS but does appear either in the oath or declaration or a transmittal letter filed with the application and the Office notes the claim for priority, no petition will be required to accept a late claim for priority. This is because the application would have been scheduled for publication on the basis of the information concerning the claim submitted elsewhere in the application within the time period set forth in 37 CFR § 1.78(a)(2)(ii). On the other hand, if the USPTO does not note the claim for priority to the prior-filed applications set forth in the oath or declaration or transmittal letter submitted with the application, a petition will be required to accept a late claim for priority under 37 CFR § 1.78(a)(3).¹ In the present case, the Office noted the claim for priority to the prior-filed application in the transmittal letter filed with the application, as shown by their inclusion on the filing receipt.

In view of the above, the \$1,410.00 petition fee submitted is unnecessary. Petitioner may request a refund of the petition fee by writing to the Office of Finance, Refund Section. A copy of this decision should accompany the request.

¹ Note MPEP 201.11 (III)(D) and 66 Federal Register 67087 at 67089 (Dec. 28, 2001), effective December 28, 2001.

Even though, priority was claimed in the first sentence of the specification to Application No. 10/251,505, applicant may want to consider filing an amendment to correct the filing date of September 30, 2002 to September 20, 2002.

Any questions concerning this decision on petition may be directed to the undersigned at (571) 272-3208. All other inquiries concerning either the examination procedures or status of the application should be directed to the Technology Center.

This application is being referred to Technology Center AU 3762 for consideration by the examiner of applicant's entitlement to claim benefit of priority under 35 U.S.C. § 120 to the prior-filed application.

/Karen Creasy/
Karen Creasy
Petitions Examiner
Office of Petitions